

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Frontier Local Operating)	
Companies for Limited Forbearance Under)	WC Docket No. 08-205
47 U.S.C. § 160(c) from Enforcement of)	
Rule 69.5(a), 47 U.S.C. § 251(b), and)	
Commission Orders on the ESP Exemption)	

**COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

**RONALD K. CHEN
PUBLIC ADVOCATE**

**STEFANIE A. BRAND
DIRECTOR**

Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
(973) 648-2690 - Phone
(973) 624-1047 – Fax
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

On the Comments:
Christopher J. White, Esq.
Deputy Public Advocate
Maria T. Novas-Ruiz,
Assistant Deputy Public Advocate

October 10, 2008

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Frontier Local Operating)	
Companies for Limited Forbearance Under)	WC Docket No. 08-205
47 U.S.C. § 160(c) from Enforcement of)	
Rule 69.5(a), 47 U.S.C. § 251(b), and)	
Commission Orders on the ESP Exemption)	

**COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

I. INTRODUCTION

Pursuant to the Public Notice issued by the Federal Communications Commission ("FCC" or "Commission"),¹ the New Jersey Division of Rate Counsel ("Rate Counsel")² submits comments in the above-captioned proceeding.

¹ / "Petition of Frontier Local Operating Companies For Forbearance From Enforcement of Section 69.5(a) of the Commission's Rules, Section 251(b) of the Communications Act and Commission Orders of the ESP Exemption, Pleading Cycle Established," FCC Public Notice, DA 08-2228, October 3, 2008.

² / Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996 ("Act" or "1996 Act"). Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the 1996 Act," or "the Act," and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

A. SUMMARY

On September 25, 2008, Frontier Local Operating Companies, ("Frontier") submitted a petition seeking that the Commission forbear from any application or enforcement of the exemption for enhanced service providers ("ESP") to Internet Protocol to public switched telephone network ("IP-to-PSTN") voice traffic. Frontier states that some companies providing IP-originated voice services or carrying such traffic are wrongly claiming the ESP exemption and failing to contribute an equal share toward the costs of the PSTN, even though interconnected VoIP and traditional voice service use the PSTN in the very same way. Frontier notes that this arbitrage creates serious problems that make forbearance both appropriate and necessary.³ Frontier's Petition mirrors closely the petition filed by Embarq Local Operating Companies ("Embarq") on January 11, 2008, and seeks the same relief.⁴

These two petitions underscore the importance of and the necessity for the Commission to address intercarrier compensation reform in a single comprehensive proceeding, rather than through piecemeal review of disparate petitions.⁵ Frontier asserts that "[p]reserving access revenues is essential to ensure that Americans in all areas of the country, including those in rural areas, receive quality service."⁶ Frontier further asserts that Commission action will "[h]elp promote investment in advanced telecommunications capability in rural areas where it otherwise

³ / Frontier Petition at pp. 1-2.

⁴ / Pleading Cycle Established for Petition of the Embarq Local Operating Companies for Forbearance from Enforcement of Section 69.5(a) of the Commission's rules, Section 251(b) of the Communications Act and Commission Orders on the ISP Exemption, WC Docket No. 08-08, DA 08-94 (Jan. 14, 2008).

⁵ / Rate Counsel incorporates herein by reference its comments submitted August 12, 2008, regarding the AT&T Petition in WC Docket No. 08-152, and its comments submitted on August 26, 2008, regarding the Embarq Petition in WC Docket No. 08-160, because Frontier's Petition suffers similar procedural flaws as does the Petitions of AT&T's and Embarq, annexed hereto.

⁶ / Frontier Petition, at v. and pp. 20-21 and 27.

will be increasingly difficult to justify,” and “[w]ill minimize regulatory arbitrage, and reduce disputes.”⁷

Rate Counsel agrees that the Commission should not allow IP-originated voice traffic to evade the obligation of all carriers to pay access charges. Although Rate Counsel continues to support the establishment of a rational intercarrier compensation regime, including the payment of access charges by all carriers regardless of the underlying technology that they use, Rate Counsel is not persuaded that Frontier’s Petition (or Embarq’s Petition WC Docket 08-8) require more urgent attention than other pressing regulatory matters, such as excessive intercarrier special access rates.⁸

II. DISCUSSION

The FCC Should Dismiss the Petition Because the Issue of Intercarrier Compensation, and Access Charges On VoIP are Presently Before the FCC for Decision.

Frontier’s Petition should be dismissed because the subject matter of the Petition is currently before the FCC in the Intercarrier Compensation and IP-Enabled Services proceedings currently pending FCC’s final action and therefore, the Petition is seeking duplicative relief.⁹ Rate Counsel submits that rather than examine Frontier’s Petition in isolation, the Commission

⁷ / Frontier Petition, at 24-27.

⁸ / In the Matter of Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission’s Rules, and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions, WC Docket No. 08-160, Rate Counsel comments, August 26, 2008, at 3-4 (footnotes and cites omitted).

⁹ / See, Rate Counsel’s comments in the IP-Enabled Services Proceeding; accord Rate Counsel comments in WC Docket No. 05-276, dated December 7, 2006 (stating, among other things, “When voice calls are handled over the ‘traditional’ interexchange carrier network or using IP technology, they should be assessed comparable access charges, consistent with the existing access charge framework, and, in the future, according to the unified intercarrier compensation regime presently under consideration by the FCC in Docket 01-92).

should complete its comprehensive reform of intercarrier compensation. Intercarrier compensation issues should be resolved in a coordinated, comprehensive fashion rather than through company-specific issues. Because the subject matter of this Petition is part of a larger and over-arching industry-wide dilemma currently awaiting Commission resolution, Rate Counsel submits that a piecemeal approach namely, carrier by carrier, is inappropriate and the Commission should dismiss the Petition.

The Petition is not Complete as Filed, and Frontier has Failed to Exhaust Other Administrative Remedies.

The FCC has imposed complete when filed requirements when there is a short time to act.¹⁰ Frontier's Petition is incomplete as filed, and numerous deficiencies exist with the Petition including but not limited to:

- The Petition fails to identify the states where carriers are claiming enhanced service provider ("ESP") exemption on IP Voice traffic;
- The Petition fails to quantify the new revenues that would result from imposing access charges on carriers claiming the exemption;
- The Petition fails to identify the providers that are claiming the ESP exemption;¹¹
- The Petition fails to quantify on a state-specific basis, the volume of minutes that the Petition would affect; and
- The Petition fails to provide recent and trend data about the total volume of traffic that the Petition would affect.

¹⁰/ See *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB re. Mar. 23, 2001); see *SWBT/Oklahoma Order*, 16 FCC Red at 6247, para. 21.

¹¹ / *Frontier's* Petition throughout refers to "carriers" in general terms.

Frontier's Petition simply fails to provide the data necessary to enable meaningful analysis of and comment on its Petition. As a result, the Petition is incomplete as filed, warranting dismissal. There is simply no urgency to adopt an interim solution, and it would be highly problematic to use the forbearance process to resolve complex, inter-related industry-wide issues that are currently pending before the Commission.

Finally, Frontier has failed to exhaust its' administrative remedies by failing to seek relief under Section 208. Frontier has not demonstrated that the Section 208 complaint process is an inadequate remedy to address carriers that assert the ESP exemption as a shield to paying access charges on IP Voice traffic. For these reasons, Frontier's Petition should be rejected and the FCC should dismiss the Petition.

If the Petition is not Dismissed, the Commission Should Require Frontier to Supplement the Petition With Additional Data and Support, and the Commission Should Proceed By Notice Of Proposed Rulemaking And Consider Such Petition As Part Of Such Rulemaking.

Frontier's Petition is an proposed change or attempted modification of the Coalition for Affordable Local and Long Distance Services Order ("*CALLS Order*"),¹² which would impact or change the reciprocal compensation rate regime, such changes require rulemaking with notice and comment. The original *CALLS* proposal, which was presented as a "comprehensive solution to the membership's access charges," was subject to a notice of proposed rulemaking, with an original 44-day initial comment period and a 21-day reply comment period,¹³ and the subsequently modified *CALLS* proposal was subject to 22-day initial comment period and then

¹² / *Access Charge Reform*, Sixth Report and Order, 15 FCC.Rcd 12962 (2000) ("*CALLS Order*").

¹³ / *In the Matter of Access Charge Reform*, CC Docket No. 96-262, *Notice of Proposed Rulemaking*, rel. September 15, 1999. 14 FCC Rcd 16872.

14-day reply comment period.¹⁴ Moreover, noticed should be by publication in the *Federal Register*, so that all interested parties are afforded the opportunity to comment.¹⁵

III. CONCLUSION

Rate Counsel submits that the Petition should be dismissed for each of the three reasons offered.¹⁶ These reasons are (1) Frontier is seeking duplicative relief now being considered in the IP-Enabled Services and the Inter-carrier Compensation proceedings, (2) the Petition is not complete as filed and lacks essential information so as to preclude review and comment, and (3) Frontier failed to exhaust other administrative remedies that would afford appropriate relief, namely, the filing of Section 208 complaints.

If the Petition is not dismissed, the Commission should require Frontier to supplement the Petition with additional data and support, and the Commission should proceed by notice of proposed rulemaking and consider such Petition as part of such rulemaking. The Petition seeks to modify the *Calls Order* and modification to the *Calls Order* must be done through rulemaking.

¹⁴ / “Coalition for Affordable Local and Long Distance Services (CALLS) Modified Proposal, CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 99-249, CC Docket No. 96-45,” DA 00-533, March 8, 2000.

¹⁵ / Similarly, Rate Counsel takes the opportunity to note the shortness of the pleading cycle in this Docket, wherein the Public Notice although released on October 3, 2008 was not posted on-line until Monday, October 6, 2008, and requires that comments be filed by end of the week on Friday October, 10, 2008, with reply comments a week thereafter on October 17, 2008. The shortness of the schedule not only compromises insightful discussion of the issues, but curtails due process.

¹⁶ / Rate Counsel, at 4-7.

Respectfully submitted,

RONALD K. CHEN
NEW JERSEY PUBLIC ADVOCATE

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

By: **Christopher J. White, Esq.**
Christopher J. White, Esq.
Deputy Public Advocate

October 10, 2008.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of AT&T Inc. for Interim)	
Declaratory Ruling and Limited Waivers)	WC Docket No. 08-152
Regarding Access Charges and the "ESP)	
Exemption")	

**COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

**RONALD K. CHEN
PUBLIC ADVOCATE**

**STEFANIE A. BRAND
DIRECTOR**

Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
(973) 648-2690 - Phone
(973) 624-1047 - Fax
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

On the Comments:
Christopher J. White, Esq.
Deputy Public Advocate

August 13, 2008

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of AT&T Inc. for Interim)	
Declaratory Ruling and Limited Waivers)	WC Docket No. 08-152
Regarding Access Charges and the "ESP)	
Exemption")	

**COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

I. INTRODUCTION

Pursuant to the Public Notice issued by the Federal Communications Commission ("FCC" or "Commission"),¹ the New Jersey Division of Rate Counsel ("Rate Counsel")² submits these preliminary comments in the above-captioned proceeding.³

A. SUMMARY

On July 17, 2008, AT&T Inc. ("AT&T") filed the above-captioned petition with the FCC seeking a declaratory ruling, "on an *interim* basis, pending comprehensive reform," that:

¹ / "Petition of AT&T for Interim Declaratory Ruling and Limited Waivers, Pleading Cycle Established," FCC Public Notice, DA 08-1725, July 24, 2008.

² / Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996 ("Act" or "1996 Act"). Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the 1996 Act," or "the Act," and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

³ / As is discussed herein, Rate Counsel recommends that the Commission modify the pleading cycle.

- **Interstate terminating access charges** apply (i) to “interstate” interexchange IP-to-PSTN traffic that is delivered by a telecommunications carrier to a LEC for termination on the PSTN and (ii) to “interstate” interexchange PSTN-to-IP traffic that is delivered by a telecommunications carrier to a LEC for termination to an IP-based provider (and/or its customers) served by the LEC.

- The assessment of **intrastate terminating access charges** (i) on “intrastate” interexchange IP-to-PSTN traffic that is delivered by a telecommunications carrier to a LEC for termination on the PSTN and (ii) on “intrastate” interexchange PSTN-to-IP traffic that is delivered by a telecommunications carrier to a LEC for termination to an IP-based provider (and/or its customers) served by the LEC, does not conflict with federal policy (including the ESP Exemption) where the LEC’s intrastate terminating per-minute access rates are *equal to or less than* its interstate terminating per-minute access rates.

- **Reciprocal compensation arrangements** apply to the transport and termination of IP/PSTN traffic that is not access traffic (i.e., traffic that is “local”), when such traffic is exchanged between a LEC and another telecommunications carrier.

AT&T seeks immediate clarification regarding the proper terminating charges for Internet protocol to public switched telephone network (“IP-to-PSTN”) traffic and PSTN-to-IP traffic, and also seeks to eliminate the disparity between its interstate and intrastate terminating switched access rates.⁴ Among other things, AT&T requests a waiver of the Commission’s rules to enable it to offset foregone revenues (from reducing its intrastate

⁴ / Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers, July 17, 2008 (“Petition”), at 4. On July 17, 2008, AT&T also submitted two letters. In one letter, AT&T urges the Commission to “act decisively to unify terminating intercarrier rates for all carriers” and by so doing to eliminate the arbitrage opportunities that the existing intercarrier compensation system has created. Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T to Chairman Kevin Martin, July 17, 2008, re Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, High-Cost Universal Service Support, WC Docket No. 05-337; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Intercarrier Compensation for ISP-Bound Traffic, WC Docket No. 99-68; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; IP-Enabled Services, WC Docket No. 04-36. In a separate letter, AT&T seeks the Commission’s formal extension of the preemption set forth in the Vonage Order to fixed-location VoIP services, and recommends that the Commission authorize states to assess state universal service fund contribution requirements on VoIP services “provided that those contributions do not burden the federal contribution mechanism.” Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T to Chairman Kevin Martin, July 17, 2008, re In the Matter of IP-Enabled Services, WC Docket No. 04-36; Universal Service Contribution Methodology, WC Docket No. 06-122; Federal-State Joint Board on Universal Service, CC Docket No. 96-45. Rate Counsel certainly supports the Commission’s efforts to unify intercarrier compensation rates, and, by so doing, to minimize arbitrage opportunities. Rate Counsel opposes the Commission’s preemption of states’ regulation of fixed-location VoIP, and welcomes the opportunity to address this matter in any investigation in which the Commission considers this issue.

terminating access charges) by increasing its subscriber line charge ("SLC") above the level permitted by the *CALLS Order*,⁵ and to increase the interstate originating switched access component of its Average Traffic Sensitive ("ATS") rate above the level permitted by the *CALLS Order* up to a level that would yield an ATS rate of no higher than \$0.0095.⁶ Rate Counsel submits that the FCC should dismiss the Petition or in the alternative, the FCC should require AT&T to supplement the Petition with additional data and support, and the FCC should proceed by notice of proposed rulemaking and consider such Petition as part of such rulemaking.

II. DISCUSSION

A. **The FCC should dismiss the Petition because the issue of access charges on VoIP is presently before the FCC for decision in IP-Enabled Services proceeding, WC Docket No. 04-36, the Petition is not complete as filed, and AT&T has failed to exhaust other administrative remedies**

Rate Counsel submits that the Petition should be dismissed on three grounds. First, the subject matter of the Petition is currently before the FCC in the IP-Enabled Services proceeding pending FCC's final action and therefore, the Petition is seeking duplicative relief.⁷ AT&T fully participated in the other proceeding and duplicate proceedings are not in the public interest or an effective use of administrative resources. Rate Counsel continues to support the establishment of a rational intercarrier compensation regime, including the payment of access charges by all

⁵ / *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"). The *CALLS Order* adopted an integrated interstate access reform and universal service proposal put forth by the members of the Coalition for Affordable Local and Long Distance Service. Interstate Access charges were reduced and subscriber line rates were increased and capped which brought lower rates for consumers.

⁶ / *Id.*, at 47. The \$0.0095 ATS rate corresponds with the rate permitted under the *CALLS Order* for low-density price cap carriers. Under the *CALLS Order*, an ATS rate of \$0.0055 applies to the Bell operating company local exchange carriers.

⁷ / See, Rate Counsel's comments in the IP-Enabled Services Proceeding; accord Rate Counsel comments in WC Docket No. 05-276, dated December 7, 2006 (stating, among other things, "When voice calls are handled over the 'traditional' interexchange carrier network or using IP technology, they should be assessed comparable access charges, consistent with the existing access charge framework, and, in the future, according to the unified intercarrier compensation regime presently under consideration by the FCC in Docket 01-92).

carriers regardless of the underlying technology that they use. This issue should be addressed, however, in a single proceeding rather than in a piecemeal fashion.

Second, AT&T's Petition is incomplete as filed. The FCC has imposed "complete when filed" requirements when there is a short time to act.⁸ AT&T is requesting action in part as a way to resolve ISP-bound compensation rules before November 5, 2008.⁹ However, numerous deficiencies exist with the Petition including but not limited to:

- The Petition lacks necessary supporting data and documentation necessary to file comments;
- The Petition fails to identify the states where intrastate access charges exceed interstate access charges;
- The Petition fails to identify, on a state-specific basis, the volume of traffic that would be affected by its proposed rate reduction;
- The Petition fails to quantify the new revenues that would result from imposing access charges on VoIP traffic;
- The Petition fails to identify the states in which it proposes to raise the SLC, the proposed rate increase, and the quantity of customers that would be affected;

^{8/} See *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB re. Mar. 23, 2001); see *SWBT/Oklahoma Order*, 16 FCC Rcd at 6247, para. 21.

^{9/} See *Core Communications, Inc.* No. 07-1446, 2008 WL 264936 (D.C. Cir July 8, 2008) wherein the Court issued a Mandamus Order requiring the FCC to explain the legal basis for interim intercarrier compensation rules that exclude ISP-bound traffic from the reciprocal compensation requirements of Section 251(b)(5) in a final order, no later than November 5, 2008. Absent an order by November 5, 2008, the rules are vacated.

- The Petition fails to identify the IP providers that are failing to pay access charges;¹⁰
- The Petition fails to identify the states in which IP providers are failing to pay access charges;
- The Petition fails to quantify on a state-specific basis, the volume of minutes that the Petition would affect; and
- The Petition fails to provide recent and trend data about the total volume of traffic that the Petition would affect.

AT&T simply fails to provide the data necessary to enable meaningful analysis of and comment on its Petition. As a result, the Petition is incomplete as filed, warranting dismissal.

Finally, AT&T's Petition should be dismissed because it has neglected to exhaust administrative remedies by failing to seek relief under Section 208. AT&T has not demonstrated that the Section 208 complaint process is an inadequate remedy for the harms regarding the payment of access charges on VoIP traffic and improper arbitrage which underlie its request for a declaratory ruling in this matter. In view of the foregoing, the FCC should exercise its discretion and dismiss the Petition.

B. If the Petition is not dismissed, the FCC should require AT&T to supplement the Petition with additional data and support, and the FCC should proceed by notice of proposed rulemaking and consider such Petition as part of such rulemaking.

AT&T's Petition would modify the existing interstate access charge plan,¹¹ submitted nine years ago by the Coalition for Affordable Local and Long Distance Services ("CALLS").¹²

¹⁰ / See, e.g., AT&T Petition at 7 and 41, discussing these CLECs in general terms.

¹¹ / See, e.g., AT&T's request to the Commission to waive its rules to enable AT&T to raise the SLC and to raise the interstate originating access charge; AT&T Petition at 42-43, 47.

¹² / Access Charge Reform, Sixth Report and Order, 15 FCC Rcd 12962 (2000) ("CALLS Order").

That Plan was developed through a full rulemaking process and yet, through its Petition, AT&T seeks to abridge the notice and comment period for proposed modifications to the Plan. The original CALLS proposal, which was presented as a “comprehensive solution to the membership’s access charges,” was subject to a notice of proposed rulemaking, with an original 44-day initial comment period and a 21-day reply comment period.¹³ The subsequently modified CALLS proposal was subject to 22-day initial comment period and then 14-day reply comment period.¹⁴ With the changes to the Plan sought by AT&T, such changes should be noticed by publication in the *Federal Register*, so that all interested parties are afforded the opportunity to comment.

The Commission’s abbreviated comment cycle would thwart its ability to render sound policy decisions in this complex matter. The issues raised by AT&T’s Petition are of great public importance. AT&T proposes to utilize the *interstate* SLC as a way to recover foregone *intrastate* access revenues: transforming the SLC from its original purpose of recovering the interstate portion of the fixed loop cost into a revenue recovery mechanism for foregone intrastate revenues. This would represent a fundamental departure from the FCC’s jurisdictional separations rules and from the FCC’s *CALLS Order*. AT&T’s proposal to raise the interstate originating switched access charge is a modification to the *CALLS Order*, and will impact the rates consumer are charged. Such changes should not be done absent rulemaking.

Furthermore, in the days following the Commission’s release on July 24, 2008, of its public notice seeking comment on the AT&T Petition, Embarq submitted a separate, but related

¹³ / *In the Matter of Access Charge Reform*, CC Docket No. 96-262, *Notice of Proposed Rulemaking*, rel. September 15, 1999, 14 FCC Rcd 16872.

¹⁴ / “Coalition for Affordable Local and Long Distance Services (CALLS) Modified Proposal, CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 99-249, CC Docket No. 96-45,” DA 00-533, March 8, 2000.

petition.¹⁵ In recognition of the public importance of this proceeding and the potential impact on consumers, three separate motions have been submitted seeking extensions of time and to consolidate this proceeding with the Embarq proceeding:

- Motion of the National Association of Regulatory Utility Commissioners for Extension of Time, August 8, 2008 (seeking extension of time for filing initial and reply comments to August 28, 2008, and September 11, 2008, respectively and stating that “the FCC’s proposed action, insofar as it directly affects end user rate structures/fees accessed for basic service, and has some preemptive elements, clearly impact upon” regulators’ “obligation to assure that such telecommunications services and facilities as may be required by the public convenience and necessity are universally provided at rates that are just and reasonable”);
- Motion for Consolidation of Proceedings and Extension of Filing Deadline, The Independent Telephone & Telecommunications Alliance, National Exchange Carrier Association, Inc., Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance, August 8, 2008 (seeking consolidation of the Embarq¹⁶ and AT&T proceedings, and extension of time for filing initial and reply comments to August 26, 2008 and September 5, 2008, respectively, and stating, “[c]onsolidation of the proceedings with synchronized extended filing deadlines for comments and reply comments will enable the Commission and interested parties to address efficiently and rationally the common issues of the petitions”); and
- Motion for Extension of Time, COMPTTEL, August 6, 2008 (seeking extension of time for filing initial and reply comments to August 28, 2008, and September 8, 2008, respectively and stating that “[w]hile AT&T has characterized the petition as a request for interim action, resolution of the petition will likely have a long term impact on critical aspects of intercarrier compensation reform”).

As NARUC aptly observes, AT&T’s Petition, if granted, would affect directly regulators’ obligation to ensure that intrastate rates are just and reasonable. As the three motions indicate,

¹⁵ / Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission’s Rules and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions, Docket No. 08-160, August 1, 2008 (“Embarq Petition”).

¹⁶ / Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission’s Rules and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions, Docket No. 08-160. On August 5, 2008, the Commission issued PN DA-08-1846 establishing the pleading cycle for the Embarq petition, with initial and reply comments due August 26, 2008 and September 5, 2008, respectively.

AT&T's Petition also raises larger issues that affect the Commission's efforts to reform intercarrier compensation. If changes to the rules adopted in the *CALLS Order* are to be considered, the FCC should proceed by issuance of a notice of proposed rulemaking so that full public participation is possible. The Petition seeks to modify the *CALLS Order* and therefore such action requires a notice of proposed rulemaking. In addition, the FCC should require AT&T to supplement its filing as discussed above at pages 4-5 as part of any rulemaking. Without additional data and support, Rate Counsel can not analyze whether the proposal furthers consumers' interest, promotes competition and otherwise promotes the public interest. Without additional data and information, Rate Counsel is hindered in recommending other alternatives or otherwise offering meaningful comment whether the proposal will result in just and reasonable rates for consumers.

III. CONCLUSION

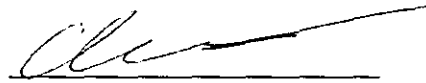
Rate Counsel recommends that the Commission dismiss AT&T's Petition. In the alternative, if the FCC is considering addressing access charges for VoIP traffic, addressing the IP/PSTN arbitrage problem, and making modifications to the *CALLS Order*, such changes should be undertaken by issuance of a further notice of proposed rulemaking with proper notice to the public, with directions to AT&T to supplement its Petition, and consideration of such supplemented Petition as part of the rulemaking.

Respectfully submitted,

RONALD K. CHEN
PUBLIC ADVOCATE

Stefanie A. Brand
Director

By:



Christopher J. White, Esq.
Deputy Public Advocate

August 13, 2008

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Petition of AT&T Inc. for Interim
Declaratory Ruling and Limited Waivers
Regarding Access Charges and the "ESP
Exemption"

)
)
)
)
)
)

WC Docket No. 08-152

**REPLY COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

RONALD K. CHEN
PUBLIC ADVOCATE

STEFANIE A. BRAND
DIRECTOR

Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
(973) 648-2690 - Phone
(973) 624-1047 - Fax
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

On the Comments:
Christopher J. White, Esq.
Deputy Public Advocate

September 2, 2008

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Petition of AT&T Inc. for Interim)	
Declaratory Ruling and Limited Waivers)	WC Docket No. 08-152
Regarding Access Charges and the "ESP)	
Exemption")	

COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL

I. INTRODUCTION AND SUMMARY

Pursuant to the Public Notice issued by the Federal Communications Commission ("FCC" or "Commission"),¹ the New Jersey Division of Rate Counsel ("Rate Counsel")² hereby submits these reply comments in the above-captioned proceeding.³

¹ / "Petition of AT&T for Interim Declaratory Ruling and Limited Waivers, Pleading Cycle Established," FCC Public Notice, DA 08-1725, July 24, 2008. On August 13, 2008, the Wireline Competition Bureau extended the filing deadline. FCC Public Notice, DA 08-1904.

² / Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996 ("Act" or "1996 Act"). Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the 1996 Act," or "the Act," and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

³ / Rate Counsel submitted initial comments opposing AT&T's Petition on August 12, 2008. Rate Counsel stated that the FCC should dismiss the Petition or in the alternative require AT&T to supplement the Petition and publish notice in the Federal Register with revised dates for comments and reply comments. Rate Counsel, at 3.

Initial comments urge the Commission to deny AT&T's Petition⁴ for diverse and persuasive reasons. The Petition lacks supporting data and studies, would exacerbate opportunities for regulatory arbitrage, would enable AT&T to raise the subscriber line charge ("SLC") selectively in markets with the least competition (harming consumers and competitors), is based on the faulty premise that AT&T is "entitled" to be made whole when any form of intercarrier compensation reform occurs, and would elevate AT&T's specific concerns inappropriately above the Commission's more important goal of completing comprehensive intercarrier compensation reform for the entire industry (as well as addressing other pressing matters such as special access, separations, and universal service).⁵ Initial comments demonstrate that the Commission should deny AT&T's Petition for procedural and substantive reasons.

Rate Counsel's comments, submitted in WC Docket No. 08-160, regarding Embarq's petition, similarly opposed incumbent carriers' attempts to be "made whole" and also similarly objected to an individual carrier's attempt to leapfrog its specific concerns to the head of the regulatory line. Rate Counsel's comments, submitted in the Embarq proceeding, apply here as well:

[S]imilar to AT&T's approach, Embarq seemingly seeks to be "made whole" as a result of reform of intercarrier compensation, which means that the Embarq Petition is fundamentally flawed. Rate Counsel concurs with Sprint Nextel in its rejection of "the notion that any carrier or class of carrier is automatically entitled to a guaranteed revenue stream to neutralize the impact of regulatory reforms."

⁴ / Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers, July 17, 2008 ("Petition").

⁵ / The vast majority of initial comments recommend that the Commission deny AT&T's Petition. As an example of the minority view, the Independent Telephone & Telecommunications Alliance ("ITTA") states, "ITTA does not oppose AT&T's waiver request to the extent it applies to AT&T alone." ITTA, at 2. The United States Telecom Association ("USTelecom") summarizes its general recommendations on intercarrier compensation reform and regarding AT&T's specific petition simply states: "The Commission should not mandate the particular solutions proposed by AT&T and Embarq for other companies, but rather allow others to volunteer to implement these solutions if adopted for the respective petitioners by the Commission." USTelecom, at 2.

Furthermore, as Sprint Nextel aptly states, carriers provide many services (such as broadband, video, and voice over IP), over networks that carriers have built in part with universal service subsidies and access charges. In any assessment of the need for an alternative recovery mechanism for revenues "foregone" as a result of intercarrier compensation reform, it is important, as Sprint Nextel states "to consider the overall corporate situation."

Furthermore, although Rate Counsel continues to support the establishment of a rational intercarrier compensation regime, including the payment of access charges by all carriers regardless of the underlying technology that they use, Rate Counsel is not persuaded that Embarq's Petition (or AT&T's Petition) requires more urgent attention than other pressing regulatory matters, such as excessive intercarrier special access rates.⁶

Rate Counsel urges the Commission to reject AT&T's Petition for the reasons set forth in Rate Counsel's and others' initial comments, as well as in these reply comments.

II. DISCUSSION

Rather than examine AT&T's Petition in isolation, the Commission should complete its comprehensive reform of intercarrier compensation.

The Commission should complete comprehensive reform of intercarrier compensation rather than grant AT&T's petition.⁷ Rate Counsel concurs with the Massachusetts Department of Telecommunications and Cable ("MTDC") that "[i]ntercarrier compensation issues should be resolved in a coordinated, comprehensive fashion rather than through company-specific issues" and that carriers' frustration with the pace of the Commission's intercarrier compensation proceeding "is not grounds for resorting to inferior processes to gain the reform [carriers] seek."⁸ Rate Counsel shares the concerns expressed by Core Communications, Inc. ("Core") that AT&T's Petition is antithetical to the Commission's stated goal of unifying intercarrier

⁶ / In the Matter of Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission's Rules, and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions, WC Docket No. 08-160, Rate Counsel comments, August 26, 2008, at 3-4 (footnotes and cites omitted).

⁷ / AdHoc Telecommunications Users Committee ("AdHoc"), at 7.

⁸ / MTDC, at 2.

compensation rates,⁹ because it would create new arbitrage opportunities, further exacerbating the very problems that the pending intercarrier compensation proceeding is seeking to remedy.¹⁰ Furthermore, setting different rates for similar functions, as would be permitted if the Commission grants AT&T's Petition, would be inconsistent with the Commission's efforts to set cost-based rates.¹¹ As Pac-West Telecomm, Inc. ("Pac-West") states, "it is far more important that this reform be done right than that it be done to meet an unrealistic deadline."¹² There is no urgency to adopt an interim solution.¹³ As set forth in the initial comments filed by Rate Counsel and others it is problematic to use the declaratory relief process to resolve "complex, inter-related industry-wide issues."¹⁴ For these reasons, AT&T's petition should be rejected.

AT&T has failed to provide adequate studies and data in support of its Petition.

AT&T's Petition should be denied because it lacks technical studies and data, and because AT&T provides no economic or cost basis for offsetting proposed decreases in terminating rates with increases in originating rates.¹⁵ As the Texas Office of Public Utility Counsel ("TOPC") points out, AT&T does not indicate how much it seeks to recover through SLCs or through increased originating access charges.¹⁶ In the absence of such fundamentally relevant information, the Commission should deny AT&T's Petition.

⁹ / Core, at 6; *see also*, TWTC, at 2-3.

¹⁰ / *See also*, Sprint Nextel, at 2, footnote 1 (stating that the Petition would "perpetuate the flawed access charge regime"); NYDPS, at 1-2; Pennsylvania Public Utility Commission ("PaPUC"), at 28-29; COMPTTEL, at 8.

¹¹ / *See also*, Core, at 7, TWTC at 12-13.

¹² / Pac-West, at 2-3.

¹³ / AdHoc, at 4-5.

¹⁴ / MDTC, at 3.

¹⁵ / Core, at 8; COMPTTEL, at 9, footnote 19.

¹⁶ / TOPC, at 4.

AT&T's Petition would enable AT&T to selectively raise the SLC where it has market power.

Rate Counsel urges the Commission to heed the concern raised by several parties that AT&T's Petition would improperly enable AT&T to raise the SLC in those markets where consumers have the fewest alternatives.¹⁷ As Rate Counsel has stated in numerous pleadings regarding ILECs' market power, the degree of competition that AT&T confronts varies by geographic and product market.¹⁸ Therefore, AT&T's proposed ability to raise the SLC selectively in markets where it faces less competition would harm consumers and competitors.¹⁹

Rate Counsel urges the Commission to acknowledge and to consider the fact that where AT&T has had the regulatory freedom to do so, it has raised residential retail rates, including, among others, rates for vertical features.²⁰ Granting AT&T additional flexibility to further raise rates for residential customers by increasing the SLC would harm consumers and the public interest.

Major changes in the industry structure have raised the proportion of intracompany traffic.

Mergers in the wireline market and concentration in the wireless market have led to increased intracompany end-to-end traffic, which has placed non-integrated companies at a disadvantage.²¹ Rate Counsel has raised these concerns in its filings in several of the FCC's merger proceedings, noting the ILECs' re-monopolization of long distance markets with the

¹⁷ / TWTC, at 2; COMPTTEL, at 19-20.

¹⁸ / TWTC, at 5.

¹⁹ / *Id.*, at 5-12. However, Rate Counsel disagrees strongly with TWTC's unsupported assertion that "[i]t is reasonable to permit incumbent LECs to recover foregone intercarrier compensation revenue through increased SLCs.

²⁰ / *Id.*, at 7, citing California PUC, Division of Ratepayer Advocate, *Report on Rate Increases of Verizon, AT&T, Surewest and Frontier California Following Adoption of the Uniform Regulatory Framework indecision 06-08-030* (July 29, 2008). See also, COMPTTEL, at 17-18 (discussing AT&T's rate increases in Texas).

²¹ / AdHoc, at 14.

growing popularity of ILEC's packages and as a result of their acquisition of other ILECs, MCI and legacy AT&T.

The preservation of historic revenue streams has no place in a purportedly competitive market.

Initial comments protest AT&T's assumption that it has a "right" to recover intercarrier revenues that it loses as a result of the reform of intercarrier compensation.²² As TWTC aptly states, "the point of intercarrier compensation reform is to promote efficient market outcomes, *not to protect specific carriers from revenue shortfalls.*"²³ Rate Counsel concurs with TWTC that any assessment of the impact of intercarrier compensation reform "should consider the effect of the reform on the company as a whole, not just the incumbent LEC business."²⁴

AdHoc identifies AT&T's contradictory regulatory pursuits. AT&T, in other federal and state proceedings, seeks to depict a purportedly competitive market and, on that basis has sought and gained deregulation, and yet in this proceeding AT&T seeks to be made whole from the results of changing its intercarrier compensation rates to accommodate the changing market.²⁵ Sprint Nextel raises the concern that [a]lthough AT&T is quick to request access replacement mechanisms ... it is utterly silent about the windfall in additional revenues it stands to gain if it is allowed to assess access charges, rather than bill and keep, reciprocal compensation, or \$.0007 rates, on IP/PSTN traffic."²⁶ Rate Counsel concurs with COMPTTEL that:

The pro-competitive policies that the Commission has encouraged are designed to force excess revenues from the market, not merely shift them into the prices of other services. Before the Commission may even consider permitting AT&T to increase its federal SLCs and/or originating access rates to offset any voluntary

²² / TWTC, at 3.

²³ / *Id.*, at 15 (emphasis in original).

²⁴ / *Id.*, at 15.

²⁵ / AdHoc, at 18-19.

²⁶ / Sprint Nextel, at 7, footnote 10.

reductions to its intrastate rates, the Commission must first determine whether any offsetting revenues are appropriate. AT&T has failed to provide the evidentiary support necessary to make that determination.²⁷

The Commission should flatly reject industry's attempt to "solve" intercarrier compensation disparities by raising the SLC.

Rate Counsel joins the many comments supporting timely intercarrier compensation reform. However, the consumer should not be required to foot the bill for intercarrier compensation reform. Rate Counsel urges the Commission to reject Sprint Nextel's recommendation that "AT&T . . . be allowed to turn to its own users through increases in its SLCs to the capped levels and reduce the burden it imposes on other carriers through its inflated switched access charges."²⁸ According to Sprint Nextel, "[c]onsumers will benefit from [the] more rational structure" associated with reduced intrastate access charges and increased SLCs.²⁹ There is little evidence that carriers flow through reduced access charges to consumers,³⁰ and, furthermore, as Rate Counsel discusses at length in comments submitted in CC Docket No. 01-92, SLC increases unfairly burden consumers who make few long distance calls. Rate Counsel concurs with the concern of New York Department of Public Service ("NYDPS") that "[t]he consumers' bills would go up and stay up. . ." and that AT&T's petition "overlooks the inequities of converting from a usage sensitive charge to a flat rate charge- those hit the hardest are likely to be those of limited means that make few calls."³¹ There is little consumer benefit in an increased SLC, but there is potential for significant harm, particularly to those with the lowest income. Furthermore, unless and until the Commission examines (as Sprint Nextel indeed

²⁷ / COMPTel, at 13.

²⁸ / Sprint Nextel, at 10.

²⁹ / *Id.*

³⁰ / PaPUC, at 26.

³¹ / NYDPS, at 3-4; *see also* PaPUC, at 6, and 22-24 (describing declining penetration rates among low-income households).

recommends) *all* aspects of a company's operations (including excessive interstate special access returns, allocation of common loop costs and expenses, etc.), there should be no SLC increases.

The FCC lacks jurisdiction over intrastate non-nomadic VoIP and over intrastate access charges.

Rate Counsel concurs with the National Association of Regulatory Utility Commissioners ("NARUC") that the Commission "has *never* found that *non-nomadic* VoIP is subject to federal preemption."³² Furthermore, as NARUC explains, the FCC cannot use federal funds to reduce intrastate intercarrier compensation charges without making certain separations rules, and, furthermore, any such proposed rule changes must be referred first to the Federal-State Joint Board on Separations.³³ TOPC similarly objects to AT&T's plan to recover "lost *intrastate* access charge revenue through the *interstate* SLC."³⁴ Several State regulators oppose the proposed preemption of state regulation of intrastate access charges.³⁵ PaPUC states, "[f]ederal preemption of intrastate ratemaking is not a principle that has been condoned, and should not be lightheartedly applied in the instant proceeding."³⁶

III. CONCLUSION

Rate Counsel reiterates its initial position that the Petition should be dismissed for each of the three reasons offered.³⁷ These reasons are (1) AT&T is seeking duplicative relief now being

³² / NARUC, at 2.

³³ / *Id.*, at 3; *see also* PaPUC, at 11.

³⁴ / TOPC, at 5 (emphasis in original).

³⁵ / NYDPS, at 2-3; PaPUC, at 5-6.

³⁶ / PaPUC, at 15, citing *Louisiana v. FCC*, 476 U.S. 355, 368, 90 L.Ed. 369 (1986).

³⁷ / Rate Counsel, at 3-5

considered in the IP-Enabled Services proceeding,³⁸ (2) the Petition is not complete as filed and lacks essential information so as to preclude review and comment, and (3) AT&T did not exhaust other administrative remedies that would afford appropriate relief, the filing of a Section 208 complaint.

If the Petition is not dismissed, the Commission should require AT&T to supplement the Petition with additional data and support, and the Commission should proceed by notice of proposed rulemaking and consider such Petition as part of such rulemaking.

If changes to the rules adopted in the *CALLS* Order are to be considered, the FCC should proceed by issuance of a notice of proposed rulemaking so that full public participation is possible. The Petition seeks to modify the *CALLS* Order and therefore such action requires a notice of proposed rulemaking. AT&T proposes to hijack the *interstate* SLC as a way to recover foregone *intrastate* access revenues: transforming the SLC from its original purpose of recovering the interstate portion of the fixed loop cost into a revenue recovery mechanism for foregone intrastate revenues. This would represent a fundamental departure from the FCC's jurisdictional separations rules and from the FCC's *CALLS* Order. AT&T's proposal to raise the interstate originating switched access charge is a modification to the *CALLS* Order, that impacts the rates consumer are charged. Such changes should not be made absent rulemaking

As aptly stated by the NYDPS, "AT&T's proposals infringe on regulation reserved to the states and improperly shift the burden of termination costs from carriers to consumers, with no guarantees consumers will benefit from the changes."³⁹ AT&T's petition for a declaratory ruling should be denied.

³⁸ / See also, COMPTTEL, at 5.

³⁹ / NYDPS, at 1.

Respectfully submitted,

RONALD K. CHEN
PUBLIC ADVOCATE

Stefanie A. Brand
Director

By: Christopher J. White
Christopher J. White, Esq.
Deputy Public Advocate

September 2, 2008

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Waiver of Embarq)	
Local Operating Companies of)	
Sections 61.3 and 61.44-61.48 of the)	
Commission's Rules, and any Associated)	WC Docket No. 08-160
Rules Necessary to Permit it to Unify)	
Switched Access Charges Between)	
Interstate and Intrastate Jurisdictions)	

**COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

**RONALD K. CHEN
PUBLIC ADVOCATE**

**STEFANIE A. BRAND
DIRECTOR**

Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
(973) 648-2690 - Phone
(973) 624-1047 – Fax
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

On the Comments:
Christopher J. White, Esq.
Deputy Public Advocate

August 26, 2008

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Waiver of Embarq)	
Local Operating Companies of)	
Sections 61.3 and 61.44-61.48 of the)	
Commission's Rules, and any Associated)	WC Docket No. 08-160.
Rules Necessary to Permit it to Unify)	
Switched Access Charges Between)	
Interstate and Intrastate Jurisdictions)	

**COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

I. INTRODUCTION

Pursuant to the Public Notice issued by the Federal Communications Commission ("FCC" or "Commission"),¹ the New Jersey Division of Rate Counsel ("Rate Counsel")² submits these preliminary comments in the above-captioned proceeding. On August 1, 2008, Embarq submitted a petition for waiver to allow it to unify interstate and intrastate switched access rates.³

¹ / "Petition for Waiver of Embarq, Pleading Cycle Established," FCC Public Notice, DA 08-1846, August 5, 2008.

² / Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. The above-captioned proceeding is germane to Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996 ("Act" or "1996 Act"). Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the 1996 Act," or "the Act," and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code. One of Embarq's study areas is the portion of New Jersey that United Telephone Company of New Jersey, Inc., d/b/a Embarq serves.

³ / In the Matter of Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission's Rules, and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions, WC Docket No. 08-160, August 1, 2008 ("Petition").

Embarq's Petition followed closely after the petition that AT&T Inc. ("AT&T") submitted on July 24, 2008, in which AT&T seeks a declaratory ruling, pending comprehensive reform.⁴

These two back-to-back petitions underscore the importance of the Commission addressing intercarrier compensation reform in a single comprehensive proceeding, rather than through piecemeal review of disparate petitions.⁵ The Embarq Petition shares some of the flaws that characterize the AT&T Petition: both petitions lack supporting documentation. Therefore, as with the AT&T Petition, the Commission should dismiss the Embarq Petition and require Embarq to include comprehensive supporting work papers and data in any future petition. In the alternative, the FCC should require Embarq to supplement the Petition, proceed by issuance of a notice of proposed rulemaking, making Embarq's Petition part of such rulemaking, and republish notice in the Federal Register with revised dates for comments and reply comments.

II. DISCUSSION

Embarq seeks conditional waivers of the Commission's rules to allow Embarq to unify its intrastate and interstate rates. The waiver would enable Embarq to reduce its intrastate switched access rates, and to offset these rate reductions with "relatively modest increases in interstate

⁴ / AT&T seeks immediate clarification regarding the proper terminating charges for Internet protocol to public switched telephone network ("IP-to-PSTN") traffic and PSTN-to-IP traffic, and also seeks to eliminate the disparity between its interstate and intrastate terminating switched access rates. Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers, July 17, 2008 ("AT&T Petition"), at 4. Among other things, AT&T requests a waiver of the Commission's rules to enable it to offset foregone revenues (from reducing its intrastate terminating access charges) by increasing its subscriber line charge ("SLC") above the level permitted by the *CALLS Order*, and to increase the interstate originating switched access component of its Average Traffic Sensitive ("ATS") rate above the level permitted by the *CALLS Order* up to a level that would yield an ATS rate of no higher than \$0.0095. *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) ("*CALLS Order*"). The *CALLS Order* adopted an integrated interstate access reform and universal service proposal put forth by the members of the Coalition for Affordable Local and Long Distance Service. Interstate Access charges were reduced and subscriber line rates were increased and capped which brought lower rates for consumers. The \$0.0095 ATS rate corresponds with the rate permitted under the *CALLS Order* for low-density price cap carriers. Under the *CALLS Order*, an ATS rate of \$0.0055 applies to the Bell operating company local exchange carriers.

⁵ / Rate Counsel incorporates herein by reference its comments submitted August 12, 2008, regarding the AT&T Petition in WC Docket No. 08-152 because Embarq's Petition suffers similar procedural flaws as does AT&T's Petition.

rates.”⁶ Embarq alleges that its Petition differs from that of AT&T, and states that “different carriers may need different regulatory relief to unify switched access rates successfully,”⁷ yet Embarq also states that the Commission may agree that Embarq’s Petition “is also appropriate for other rural price cap carriers who find themselves similarly situated.”⁸

Embarq asserts that “[p]reserving access revenues is essential to ensure that Americans in all areas of the country, including those in rural areas, receive quality service.”⁹ Embarq further asserts that it is a “predominately rural carrier, and it and the areas it serves suffer harm because of regulatory arbitrage of access charges.”¹⁰ As set forth in its Petition, Embarq would seek state approval of its changes to intrastate access charges,¹¹ and Embarq would base unified switched access rates on calendar year 2007 total interstate and intrastate switched access revenues and minutes of use.¹²

Unlike AT&T’s Petition, the Embarq Petition does not seek to recover foregone switched access revenues from consumers through an increase in the subscriber line charge, an attribute which renders Embarq’s Petition slightly more palatable to consumers than AT&T’s Petition. However, similar to AT&T’s approach, Embarq seemingly seeks to be “made whole” as a result of the reform of intercarrier compensation, which means that the Embarq Petition is fundamentally flawed. Rate Counsel concurs with Sprint Nextel in its rejection of “the notion that any carrier or class of carrier is automatically entitled to a guaranteed revenue stream to

⁶ / Embarq Petition, at 2.

⁷ / Embarq Petition, at 3.

⁸ / Embarq Petition, at 4.

⁹ / Embarq Petition, at 12.

¹⁰ / Embarq Petition, at 18.

¹¹ / Embarq Petition, at 21-22.

¹² / Embarq Petition, at 22. In New Jersey, interstate and intrastate switched access rates, presently \$0.0072 and \$0.0250, respectively, would be unified at a rate of \$0.0148. *Id.*, at Exhibit C.

neutralize the impact of regulatory reforms.”¹³ Furthermore, as Sprint Nextel aptly states, carriers provide many services (such as broadband, video, and voice over IP), over networks that carriers have built in part with universal service subsidies and access charges.¹⁴ In any assessment of the need for an alternative recovery mechanism for revenues “foregone” as a result of intercarrier compensation reform, it is important, as Sprint Nextel states “to consider the overall corporate situation.”¹⁵

Furthermore, although Rate Counsel continues to support the establishment of a rational intercarrier compensation regime, including the payment of access charges by all carriers regardless of the underlying technology that they use,¹⁶ Rate Counsel is not persuaded that Embarq’s Petition (or AT&T’s Petition) requires more urgent attention than other pressing regulatory matters, such as excessive intercarrier special access rates.¹⁷

¹³ / Re Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, IP-Enabled Services, WC Docket No. 04-36, Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Norina Moy, Director, Government Affairs, Sprint Nextel, August 7, 2008 (“Sprint Nextel Letter”), at 1.

¹⁴ / Sprint Nextel Letter, at 2.

¹⁵ / Sprint Nextel Letter, at 2.

¹⁶ / See e.g., Rate Counsel’s comments in the IP-Enabled Services Proceeding; accord Rate Counsel comments in WC Docket No. 05-276, dated December 7, 2006 (stating, among other things, “When voice calls are handled over the ‘traditional’ interexchange carrier network or using IP technology, they should be assessed comparable access charges, consistent with the existing access charge framework, and, in the future, according to the unified intercarrier compensation regime presently under consideration by the FCC in Docket 01-92).

¹⁷ / See Sprint Nextel Letter, at 3. In 2007, the FCC asked parties to refresh the record in the special access proceeding. Federal Communications Commission, Public Notice, “Parties Asked to Refresh Record in the Special Access Notice of Proposed Rulemaking,” WC Docket No. 05-25, RM-10593, FCC 07-123, released July 9, 2007 (“Public Notice”). See also WC Docket No. 05-35, initial and reply comments submitted by Rate Counsel on August 8, 2007 and August 15, 2007, submitted in response to the Commission’s notice, and Rate Counsel initial and reply comments, June 13, 2005 and July 29, 2005.

A. The FCC should dismiss the Petition because the issue of access charges on VoIP is presently before the FCC for decision in IP-Enabled Services proceeding, WC Docket No. 04-36, the Petition is not complete as filed, and Embarq has failed to exhaust other administrative remedies

Rate Counsel submits that the Petition should be dismissed on three grounds. First, the subject matter of the Petition is currently before the FCC in the IP-Enabled Services proceeding pending FCC's final action and therefore, the Petition is seeking duplicative relief. Rate Counsel continues to support the establishment of a rational intercarrier compensation regime, including the payment of access charges by all carriers regardless of the underlying technology that they use.¹⁸

Also, Embarq's Petition is incomplete as filed. The FCC has imposed complete when filed requirements when there is a short time to act.¹⁹ Embarq simply fails to provide the data necessary to enable meaningful analysis of and comment on its Petition and as a result, the Petition is incomplete as filed, warranting dismissal. Finally, Rate Counsel submits that Embarq has neglected to exhaust its administrative remedies by seeking relief under Section 208. Embarq has failed to demonstrate that the Section 208 complaint process is an inadequate remedy for the harms regarding the payment of access charges on VoIP traffic and improper arbitrage which underlie its request for a declaratory ruling in this matter.²⁰ In view of the foregoing, the FCC should exercise its discretion and dismiss the Petition.

¹⁸ / See, Rate Counsel's comments in the IP-Enabled Services Proceeding; accord Rate Counsel comments in WC Docket No. 05-276, dated December 7, 2006 (stating, among other things, "When voice calls are handled over the 'traditional' interexchange carrier network or using IP technology, they should be assessed comparable access charges, consistent with the existing access charge framework, and, in the future, according to the unified intercarrier compensation regime presently under consideration by the FCC in Docket 01-92).

¹⁹ / See *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB re. Mar. 23, 2001); see *SWBT/Oklahoma Order*, 16 FCC Rcd at 6247, para. 21.

²⁰ / Petition, at 15-18 (discussing access charge arbitrage).

- B. If the Petition is not dismissed, the Commission should require Embarq to supplement the Petition with additional data and support, and the Commission should proceed by notice of proposed rulemaking and consider such Petition as part of such rulemaking.**

Embarq's Petition is an improper modification to the *CALLS Order*, and would modify the existing interstate access charge plan, the plan submitted nine years ago by the Coalition for Affordable Local and Long Distance Services ("CALLS"),²¹ and yet through its Petition, Embarq seeks to abridge the notice and comment period for such proposed modifications. The original CALLS proposal, which was presented as a "comprehensive solution to the membership's access charges," was subject to a notice of proposed rulemaking, with an original 44-day initial comment period and a 21-day reply comment period,²² and the subsequently modified CALLS proposal was subject to 22-day initial comment period and then 14-day reply comment period.²³ The scope of the changes requested should be noticed by publication in the *Federal Register*, so that all interested parties are afforded the opportunity to comment.

If changes to the rules adopted in the CALLS Order are to be considered, the FCC should proceed by issuance of a notice of proposed rulemaking so that full public participation is possible. Such changes should not be done absent rulemaking

III. CONCLUSION

Rate Counsel recommends that the Commission dismiss Embarq's Petition. In the alternative, if the FCC is considering making modifications to the *CALLS Order*, such changes

²¹ / *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) ("CALLS Order").

²² / *In the Matter of Access Charge Reform*, CC Docket No. 96-262, *Notice of Proposed Rulemaking*, rel. September 15, 1999. 14 FCC Rcd 16872.

²³ / "Coalition for Affordable Local and Long Distance Services (CALLS) Modified Proposal, CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 99-249, CC Docket No. 96-45," DA 00-533, March 8, 2000.

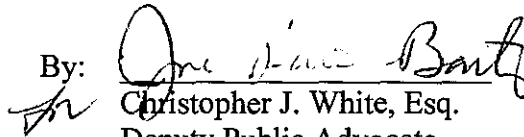
should be undertaken by issuance of a further notice of proposed rulemaking with proper notice to the public, with directions to Embarq to supplement its Petition, and consideration of such supplemented Petition as part of the rulemaking.

Respectfully submitted,

RONALD K. CHEN
PUBLIC ADVOCATE

Stefanie A. Brand
Director

By:


Christopher J. White, Esq.
Deputy Public Advocate

August 26, 2008

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Waiver of Embarq)	
Local Operating Companies of)	
Sections 61.3 and 61.44-61.48 of the)	
Commission's Rules, and any Associated)	WC Docket No. 08-160
Rules Necessary to Permit it to Unify)	
Switched Access Charges Between)	
Interstate and Intrastate Jurisdictions)	

**REPLY COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

**RONALD K. CHEN
PUBLIC ADVOCATE**

**STEFANIE A. BRAND
DIRECTOR**

Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
(973) 648-2690 - Phone
(973) 624-1047 – Fax
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

On the Comments:
Christopher J. White, Esq.
Deputy Public Advocate

September 5, 2008

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Waiver of Embarq)	
Local Operating Companies of)	
Sections 61.3 and 61.44-61.48 of the)	
Commission's Rules, and any Associated)	WC Docket No. 08-160
Rules Necessary to Permit it to Unify)	
Switched Access Charges Between)	
Interstate and Intrastate Jurisdictions)	

**REPLY COMMENTS OF THE
NEW JERSEY DIVISION OF RATE COUNSEL**

I. INTRODUCTION

Pursuant to the Public Notice issued by the Federal Communications Commission ("FCC" or "Commission"),¹ the New Jersey Division of Rate Counsel ("Rate Counsel")² submits these reply comments in the above-captioned proceeding regarding Embarq's petition for waiver to allow it to unify interstate and intrastate switched access rates.³

Far fewer parties submitted comments regarding Embarq's petition than regarding the petition of AT&T Inc. ("AT&T") in WC Docket No. 08-152. Based on its review of the initial

¹ / "Petition for Waiver of Embarq, Pleading Cycle Established," FCC Public Notice, DA 08-1846, August 5, 2008.

² / Rate Counsel submitted initial comments opposing Embarq's petition on August 26, 2008. In a related proceeding, Rate Counsel submitted initial and reply comments opposing AT&T's petition seeking immediate clarification regarding the proper terminating charges for Internet protocol to public switched telephone network ("IP-to-PSTN") traffic and PSTN-to-IP traffic, and also seeking to eliminate the disparity between its interstate and intrastate terminating switched access rates. In the Matter of Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the "ESP Exemption," WC Docket No. 08-152, Rate Counsel Initial Comments (August 12, 2008) and Rate Counsel Reply Comments (September 2, 2008).

³ / In the Matter of Petition for Waiver of Embarq Local Operating Companies of Sections 61.3 and 61.44-61.48 of the Commission's Rules, and any Associated Rules Necessary to Permit it to Unify Switched Access Charges Between Interstate and Intrastate Jurisdictions, WC Docket No. 08-160, August 1, 2008 ("Petition").

comments in this proceeding, Rate Counsel reiterates its opposition to the fragmented development of intercarrier compensation reform.⁴ The benefits of a coherent comprehensive policy greatly outweigh the purported benefits of providing piecemeal relief to individual carriers,⁵ particularly when, as in the case of the Embarq and AT&T petitions, the relief sought would harm consumers and exacerbate the already complex challenges confronting the Commission. Initial comments demonstrate that the Commission should deny Embarq's petition for procedural and substantive reasons.

Furthermore, initial comments submitted in this proceeding do not alter Rate Counsel's position that the Embarq petition lacks supporting documentation, and that, therefore, the Commission should dismiss the Embarq petition and require Embarq to include comprehensive supporting work papers and data in any future petition. Rate Counsel submits that the FCC should dismiss the petition or in the alternative require Embarq to supplement the petition and publish notice in the Federal Register with revised dates for comments and reply comments.

II. DISCUSSION

Initial comments unanimously support comprehensive intercarrier compensation reform, but diverge on the merits of Embarq's petition for immediate relief. AT&T recommends foremost that the Commission address comprehensive reform, and, only in the absence of such comprehensive reform does AT&T recommend that the Commission consider the merits of Embarq's (and AT&T's own) petitions.⁶ AT&T opposes Embarq's specific proposal to increase terminating access charges and extols instead its own proposal first to raise the subscriber line

⁴ / In its initial comments, Rate Counsel incorporated by reference its comments submitted August 12, 2008, regarding the AT&T Petition in WC Docket No. 08-152 because Embarq's Petition suffers similar procedural flaws to those of AT&T's Petition. In these reply comments, Rate Counsel similarly incorporates by references its reply comments submitted September 2, 2008, regarding the AT&T Petition.

⁵ / National Cable & Telecommunications Association, at 1.

⁶ / AT&T, at 1-3.

charge ("SLC") where there is "headroom." The Commission should reject AT&T's (and others') advocacy for raising the SLC.⁷ Rate Counsel concurs with AT&T's skepticism of Embarq's optimistic assessment of how quickly it could obtain the requisite state approval to change its intrastate access tariffs.⁸

CenturyTel, Inc. ("CenturyTel") favors a comprehensive approach rather than a piecemeal one.⁹ CenturyTel also prefers Embarq's approach to AT&T's approach because, according to CenturyTel, it would better suit the construction and financial needs of mid-sized carriers, which rely on access revenues.¹⁰ Rate Counsel concurs with CenturyTel, in its comparison of AT&T's and Embarq's proposals, that "[a]dditions to rates, such as new or increased subscriber line charges, are not nebulous separate charges for a customer, but are indeed part of an overall monthly rate increase consumers must absorb in their household budgets."¹¹ In that specific attribute (Embarq does not propose to raise the SLC), Embarq's proposal is not as flawed as is AT&T's proposal.¹²

Nonetheless, Rate Counsel concurs with the assessment by the Division of Communications of the Virginia State Corporation Commission ("VSCC Staff") that: "Intercarrier compensation is an important issue; however, Embarq's Unification Proposal is

⁷ / AT&T, at 3.

⁸ / AT&T, at 4.

⁹ / CenturyTel, at 3.

¹⁰ / CenturyTel, at 4.

¹¹ / CenturyTel, at 5; NCTA, at 3-4.

¹² / See also National Association of State Utility Consumer Advocates ("NASUCA"), at 2 (stating that "[u]nlike AT&T's proposal (and a number of other ICC "reform" measures), Embarq's current proposal would not affect end user rates or the federal Universal Service Fund" and that "[i]n that respect, Embarq's proposal is substantially superior to AT&T's.")

self-serving and does nothing to address the complex problems and issues facing the industry today.”¹³

Frontier Communications (“Frontier”) prefers Embarq’s proposal to that of AT&T because Embarq’s proposal recognizes the need for state approval of changes to intrastate access charges, reduces incentives to misclassify intrastate traffic as interstate traffic, and is a first step toward comprehensive reform.¹⁴ Rate Counsel concurs with Frontier that *state* approval of *intrastate* rates is desirable (indeed essential), and also similarly supports the elimination of opportunities for arbitrage. However, Embarq’s petition suffers from major deficiencies, such as lacking underlying data and workpapers,¹⁵ presuming that carriers must be “made whole” as a result of intercarrier compensation reform,¹⁶ and modifying the *CALLS Order*, without proper notice and comment. Therefore, Rate Counsel asks that the Commission reject the petition, including those comments that seek to extend the option for similar relief to all other carriers.¹⁷ Instead of seeking to “prop up” the existing flawed system, the Commission should focus on completing comprehensive intercarrier compensation reform.¹⁸

III. CONCLUSION

The Commission should dismiss Embarq’s petition. If the petition is not dismissed, the Commission should require Embarq to supplement the petition with additional data and support, and the

¹³ / VSCC Staff, at 2. *See also*, Verizon, at 4, stating that “the petitions would therefore still leave in place a complicated patchwork of different rates for different types of traffic and different providers.” Verizon also indicates that it “intends to outline its complete proposal for comprehensive intercarrier compensation reform in a separate document to be filed in the coming weeks.” *Id.*

¹⁴ / Frontier, at 4. *See also*, Independent Telephone & Telecommunications Alliance, at 2, 9.

¹⁵ / *See* Verizon, at 5, stating, “Embarq’s Petition does not provide sufficient detail even to assess, let alone to justify, its proposal to increase interstate access rates to replace forgone intrastate access revenues.”

¹⁶ / NASUCA, at 4-5; Sprint Nextel, at 5-7 (describing, among other things, Embarq’s high rates of return).

¹⁷ / Frontier, at 4.

¹⁸ / Sprint Nextel, at 4.

Commission should proceed by notice of proposed rulemaking and consider such petition as part of a rulemaking. The petition seeks to modify the *CALLS Order* and modifications to the *CALLS Order* must be done through rulemaking.

Respectfully submitted,

RONALD K. CHEN
PUBLIC ADVOCATE

Stefanie A. Brand
Director

By: Christopher J. White
Christopher J. White, Esq.
Deputy Public Advocate

September 5, 2008